MEMORANDUM

TO: MARK B. STEINAGEL, DOPL DIRECTOR

FROM: KEVIN M. MCDONOUGH, ASSISTANT ATTORNEY GENERAL

DATE: June 1, 2016

RE: INFORMAL LEGAL OPINION REGARDING AUTHORITY TO SIGN DEATH CERTIFICATES

INTRODUCTION

Jeffrey Coursey, Chairperson of the Physician Assistant Licensing Board, asked Bureau Manager, Larry Marx, if it is legal for physician assistants to sign Utah Death Certificates. Pursuant to Mr. Coursey's inquiry, you have asked us for an informal legal opinion concerning the authority to sign a Utah Death Certificate, and more particularly, whether physician assistants have such authority.

ISSUE PRESENTED

Do physician assistants have legal authority to sign Utah Death Certificates?

INFORMAL LEGAL OPINION

Two separate Utah legislative enactments, the Utah Vital Statistics Act ("Vital Statistics Act") and the Physician Assistant Act, together with the rules promulgated thereunder set forth in the Utah Administrative Code, are at issue in this matter. Based upon my review and analysis of Utah case law, the Utah Code, and the Utah Administrative Code, it is my informal legal

opinion that the Vital Statistics Act is controlling, and physician assistants currently lack legal authority to sign Utah Death Certificates.

APPLICABLE CASE LAW

When two statutes are interpreted together, "[w]ell-established principles of statutory construction require that a more specific statute governs instead of a more general statute." *Pan Energy v. Martin*, 813 P.2d 1142, 1145 (Utah 1991); *accord Jensen v. IHC Hospitals, Inc.*, 944 P.2d 327, 331 (Utah 1997) ("When we are faced with two statutes that purport to cover the same subject, we seek to determine the legislature's intent as to which applies. In doing this, we follow the general rules of statutory construction, which provide both that 'the best evidence of legislative intent is the plain language of the statute,' (citations omitted) and that 'a more specific statute governs instead of a more general statute.'" (citations omitted)). *See also Hall v. Utah State Department of Corrections*, 24 P.3d 958, 963-964 (Utah 2001) (the primary goal when construing statutes is to determine the true intent and purpose of the legislature by seeking to render all parts of the statute relevant and meaningful; and to avoid interpretations that render portions of a statute superfluous or inoperative.) *See also State v. Hutchinson,* 624 P.2d 1116 (Utah 1980) (an enactment is invalid if it intrudes into an area which the legislature has pre-empted by comprehensive legislation intended to blanket a particular field.) These basic tenets of law have recently been acknowledged and reaffirmed by the Utah Court of Appeals in *Asset Acceptance LLC v. Utah State Treasurer*, 2016 UT App 25, 367 P.3d 1019, 1022-1023.

It is also well recognized and a long-standing principle of administrative law that "an agency's rules must be consistent with its governing statutes." *Sanders Brine Shrimp v. Utah State Tax Commission,* 846 P.2d 1304, 1306 (Utah 1993); *accord Rocky Mountain Energy v. Utah State Tax Commission,* 852 P.2d 284, 287 (Utah 1993) (holding that "[r]ules are

subordinate to statutes and cannot confer greater rights or disabilities"). *See also Manhattan General Equipment Co. v. Commissioner of Internal Revenue,* 297 U.S. 129, 134, 56 S. Ct. 397, 399, 80 L. Ed. 528 (1936) (administrative bodies have the power to prescribe rules in order to carry into effect the will of the legislature as expressed by statute; in order for a rule to be valid, it must be in harmony with the governing statute.) These fundamental propositions of law have recently been reaffirmed by the Utah Supreme Court in *Dorsey v. Department of Workforce Services,* 330 P.3d 91, 94 (Utah 2014).

STATUTES AND ADMINISTRATIVE RULES

(A) Governing Statute

The Utah Legislature's enactment of the Vital Statistics Act (Utah Code Ann. § 26-2-1 et seq.) contains the "governing statute" that is dispositive of the issue presented. More specifically, Utah Code Ann. § 26-2-13 provides, in pertinent part, as follows:

> **26-2-13. Certificate of death – Execution and registration requirements.**
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> (1)(a) A certificate of death for each death that occurs in this state shall be filed with the local registrar of the district in which the death occurs[.]
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> (b) A certificate of death shall be registered if the certificate of death is completed and filed in accordance with this chapter.
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> (5)(a) Except as provided in Section 26-2-14, fetal death certificates, the medical section of the certificate of death shall be completed, signed, and returned to the funeral service director, or, if a funeral service director is not retained, a dispositioner, within 72 hours after death by the <u>health care professional</u> who was in charge of the decedent's care for the illness or condition which resulted in death, except when inquiry is required by Title 26, Chapter 4, Utah Medical Examiner Act. (Emphasis added.)

(b) In the absence of the health care professional or with the health care professional's approval, the certificate of death may be completed and signed by an associate physician, the chief medical officer of the institution in which death occurred, or a physician who performed an autopsy upon the decedent, if:

(i) the person has access to the medical history of the case;
(ii) the person views the decedent at or after death; and
(iii) the death is not due to causes required to be investigated by the medical examiner.

26-2-2. Definitions.[1]
As used in this chapter:

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(11) "Health care professional" means a physician or nurse practitioner.

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(15) "Nurse practitioner" means an advanced practice registered nurse specializing as a nurse practitioner who has completed an education program regarding the completion of a certificate of death developed by the department by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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(17) "Physician" means a person licensed to practice as a physician or osteopath in this state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(B) Administrative Rule

The administrative rule that corresponds to the Utah Vital Statistics Act is Utah Admin. Code R436.

R436. Health, Center for Health Data, Vital Records and Statistics.

R436-1. Duties of the Department of Health.

[1] The Definitions section of the Utah Vital Statistics Act further clarifies who has authority to sign a certificate of death.

R436-1-1. Definitions.
(1) Terms used in this rule are defined in Section 26-2-2.

R436-1-3. Requirements for Preparation of Certificates.
All certificates and records relating to vital statistics must be prepared on a typewriter or other word processing equipment with a black ribbon or printed legibly in black, unfading ink. All required signatures shall be entered in black, unfading ink. Unless otherwise directed by the State Registrar, no certificate shall be complete and acceptable for registration that:

(a) does not have the certifier's name typed or printed legibly under his signature;

• • •

(d) does not contain handwritten signatures as required. (Emphasis added.)

R436-7. Death Registration.

R436-7-1. Death Registration.
If all information necessary to complete a death certificate is not available within the time prescribed for filing of the certificate, the funeral director shall file the certificate completed with all information that is available. In all cases, the medical certification must be signed by the person responsible for such certification. (Emphasis added.)

(C) Ancillary Subordinate Statute

The issue presented arises from an inquiry made by the Chairperson of the Physician Assistant Licensing Board. Accordingly, the Physician Assistant Act of the Utah Code is applicable for purposes of this memorandum.

58-70a-101 Title.
This chapter is known as the "Physician Assistant Act."

58-70a-501 Scope of practice.

(1) A physician assistant may provide any medical services that are not specifically prohibited under this chapter or rules adopted under this chapter, and that are:

(a) within the physician assistant's skills and scope of competence;

(b) within the usual scope of practice of the physician assistant's supervising physician; and

(c) provided under the supervision of a supervising physician and in accordance with a delegation of services agreement. (Emphasis added.)

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(4) A physician assistant may not:

• • •

(c) use the title "doctor" or "physician," or by any knowing act or omission lead or permit anyone to believe he is a physician.

58-70a-102 Definitions.[2]
In addition to the definitions in Section 58-1-102, as used in this chapter:

• • •

(2)(a) "Delegation of services agreement" means written criteria jointly developed by a physician assistant's supervising physician and any substitute supervising physicians and the physician assistant, that permits a physician assistant, working under the direction or review of the supervising physician, to assist in the management of common illnesses and injuries.

(b) The agreement defines the working relationship and delegation of duties between the supervising physician and the physician assistant as specified by division rule and shall include:

(i) the prescribing of controlled substances;
(ii) the degree and means of supervision;
(iii) the frequency and mechanism of chart review;
(iv) procedures addressing situation outside the scope of practice of the physician assistant; and
(v) procedures for providing backup for the physician assistant in emergency situations.

[2] The Definitions section of the Physician Assistant Act is helpful to an understanding of the authorized scope of practice of a physician assistant.

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(4) "Practice as a physician assistant" means:

(a) the professional activities and conduct of a physician assistant in diagnosing, treating, advising, or prescribing for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, dependent upon and under the supervision of a supervising physician or substitute supervising physician in accordance with a delegation of services agreement; and

(b) the physician assistant acts as the agent of the supervising physician or substitute supervising physician when acting in accordance with a delegation of services agreement. (Emphasis added.)

(D) Ancillary Administrative Rule

The administrative rule that corresponds to the Physician Assistant Act is Utah Admin. Code R156-70a ("Physician Assistant Practice Act Rule") and sets forth, in pertinent part, as follows:

R156. Commerce, Occupational and Professional Licensing.

R156-70a. Physician Assistant Practice Act Rule.

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R156-70a-501. Working Relationship and Delegation of Duties.

In accordance with Section 58-70a-501, the working relationship and delegation of duties between the supervising physician and the physician assistant are specified as follows:

(1) The supervising physician shall provide supervision to the physician assistant to adequately serve the health care needs of the practice population and ensure that the patient's health, safety and welfare will not be adversely compromised. The degree of on-site supervision shall be outlined in the Delegation of Services Agreement maintained at the site of practice. Physician assistants may authenticate with their signature any form that may be authenticated by a physician's signature. (Emphasis added.)

LEGAL ANALYSIS

The Utah Vital Statistics Act is comprehensive legislation intended to blanket the very specific area of "vital records." Vital records include "registered certificates or reports of birth, death, fetal death, marriage, divorce, dissolution of marriage, or annulment." Utah Code Ann. § 26-2-2(21).[3]

Authority to sign a Utah Death Certificate is squarely addressed in the Vital Statistics Act. Specifically, the Utah Legislature's enactment of Utah Code Ann. § 26-2-13(5)(a) mandates that "the medical section of the certificate of death shall be completed [and] signed . . . by [a] health care professional[.]"[4] (Emphasis added.) The Legislature has defined the class of individuals who are within the scope of "health care professionals" clothed with the authority to sign a Utah Death Certificate. In this regard, Utah Code Ann. § 26-2-2(11) provides that a health care professional "means a physician or nurse practitioner." Further, for purposes of the Vital Statistics Act, pursuant to Utah Code Ann. § 26-2-2(15) "nurse practitioner" is defined as "an advanced practice registered nurse specializing as a nurse practitioner who has completed an education program regarding the completion of a certificate of death[.]" Finally, "'physician'

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[3] Pursuant to Utah Code Ann. § 26-2-2(22), "vital statistics" means the data that is derived from registered certificates and reports of, inter alia, births and deaths.

[4] The Legislature carved out two narrow exceptions to the mandate that a death certificate "be completed [and] signed by [a] health care professional." The first exception relates to fetal deaths, and is addressed in Utah Code Ann. § 26-2-14. This exception however, pertains to the "preparation" of the death certificate, and the timing for "filing" the same. Inasmuch as the death certificate still must be signed by a physician, the exception has no bearing on the issue at hand, nor does it alter the conclusions reached in this informal opinion; the second exception relates to instances wherein inquiry is required by the Utah Medical Examiner under the Utah Medical Examiner Act (Utah Code Ann. § 26-4-1 et seq.). The required signature is that of the Utah Medical Examiner, and as such, this exception has no bearing on the issue at hand, nor does it alter the conclusions reached in this informal opinion.

Additionally, Subsection (5)(b) further carves out a narrow exception for those circumstances in which the health care professional is "absent." This exception however, limits the authority to sign a death certificate to "an associate physician, the chief medical officer of the institution in which death occurred, or a physician who performed an autopsy upon the decedent[.]" This narrow exception has no bearing on the issue at hand, nor does it affect the conclusions reached in this informal opinion.

means a person licensed to practice as a physician or osteopath in this state[.]" Utah Code Ann. § 26-2-2(17).

Accordingly, the Utah Legislature has prescribed precisely who has been granted the legal authority to sign a certificate of death in the State of Utah. In essence, there are three classes of individuals who have been given statutory authority to sign a death certificate, i.e., (i) a physician; (ii) an advanced practice registered nurse (so long as the nurse practitioner has completed an education program regarding the completion of certificates of death); and (iii) the Utah Medical Examiner (pursuant to the Utah Medical Examiner Act).

The next step is to examine Administrative Rule R436 (*Health, Center for Health Data, Vital Records and Statistics*), and determine whether it expands the statutory scope of individuals who have authority to sign a certificate of death. Consistent with the case law cited hereinabove, so long as an administrative rule is in harmony with its governing statute, then it can be given full force and effect. *See Manhattan General Equipment Co. v. Commissioner of Internal Revenue,* supra at p. 3.

In this case, Administrative Rule R436 is in harmony with the Vital Statistics Act. That is, R436-1-3 (*Requirements for Preparation of Certificates*) states that "all required signatures shall be entered" on certificates related to vital statistics. Moreover, and specifically related to death certificates, R436-7-1 (*Death Registration*) states that "the medical certification must be signed by the person responsible for such certification." The rule does not elaborate or expand upon the governing statute relative to who has authority to place their signature on a certificate and/or record relating to vital statistics; rather, Rule R436 simply gives deference to, and in essence, acknowledges its governing statute. Since this corresponding administrative rule does not expand the statutory scope of authority to sign a death certificate, the administrative rule is

consistent with the governing statute. Accordingly, pursuant to the Vital Statistics Act, the only individuals with authority to sign a Utah Death Certificate are "health care professionals" as defined within the Act, i.e., a physician, an advanced practice registered nurse, and the Utah Medical Examiner.

Inasmuch as the Vital Statistics Act squarely addresses the issue at hand, it becomes necessary to examine the Physician Assistant Act (Utah Code Ann. § 58-70a-101 et seq.) and determine to what degree that Act authorizes a physician assistant (or anyone else for that matter) to sign a Utah Death Certificate. The Physician Assistant Act is relatively scant when compared to the Vital Statistics Act, and significantly, nowhere in the Physician Assistant Act does the Utah Legislature grant express authority to physician assistants (or anyone else) to sign a certificate of death. Indeed, the Act wholly fails to even make reference to a death certificate or any other "vital record."

In addition to addressing ministerial matters such as the creation of a Physician Assistant Licensing Board, and establishing licensure qualifications and requirements, Section 501 of the Physician Assistant Act identifies the scope of practice of a physician assistant.

> **58-70a-501 Scope of practice.**
> (1) A physician assistant may provide any medical services that are not specifically prohibited under this chapter or rules adopted under this chapter, and that are:
> (a) within the physician assistant's skills and scope of competence;
> (b) within the usual scope of practice of the physician assistant's supervising physician; and
> (c) provided under the supervision of a supervising physician and in accordance with a delegation of services agreement.

Thus, while not expressly authorizing a physician assistant (or anyone else) to sign a certificate of death, one could argue that Section 501 gives a physician assistant implied authority to sign a death certificate so long as doing so is "in accordance with a delegation of

services agreement." Such an argument however, flies in the face of well-established case law that when two statutes purport to cover the same subject matter, statutory construction dictates that the more specific statute trumps the more general statute. *See Hall v. Utah State Department of Corrections*, supra at p. 2.

Inasmuch as the Vital Statistics Act constitutes comprehensive legislation blanketing the specific field of vital records, it overrides the Physician Assistant Act to the extent that the Physician Assistant Act grants any implied authority to sign a death certificate. Even if a "delegation of services agreement" purported to delegate to a physician assistant the authority to sign a death certificate, such delegation would be of no force and effect. To hold otherwise would in essence nullify the very specific statutory provisions contained within the Vital Statistics Act at the expense of preserving a much more general statute. Allowing a physician assistant to be delegated the right to sign a death certificate would be adverse to the Utah Legislature's purpose of enacting the Vital Statistics Act. Simply put, the authority to sign a Utah Death Certificate is not delegable, and only a "health care professional," as defined by statute, has such authority.

Finally, it is necessary to examine the administrative rule that corresponds to the Physician Assistant Act.

> **R156-70a. Physician Assistant Practice Act Rule.**
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> **R156-70a-501. Working Relationship and Delegation of Duties.**
>
> In accordance with Section 58-70a-501, the working relationship and delegation of duties between the supervising physician and the physician assistant are specified as follows:
>
> (1) The supervising physician shall provide supervision to the physician assistant to adequately serve the health care needs of the practice

> population and ensure that the patient's health, safety and welfare will not be adversely compromised. The degree of on-site supervision shall be outlined in the Delegation of Services Agreement maintained at the site of practice. Physician assistants may authenticate with their signature any form that may be authenticated by a physician's signature. (Emphasis added.)

The plain language of the Physician Assistant Practice Act Rule ("Practice Act Rule") appears to grant physician assistants the authority to sign a death certificate. That is, because the rule allows physician assistants to "authenticate with their signature any form that may be authenticated by a physician's signature," to the extent that a death certificate is deemed to be a "form," the rule may grant physician assistants authority to sign (authenticate) a death certificate. A grant of such authority however, is contrary to clear legislative intent as evidenced by the comprehensive Vital Statistics Act. Inasmuch as the Practice Act Rule acts in derogation of Vital Statistics Act, the rule cannot be given application relative to death certificates.

Additionally, inasmuch as the Physician Assistant Act is subordinate to the Vital Statistics Act, and cannot be interpreted to give physician assistants authority to sign death certificates, it follows that the Practice Act Rule cannot be given application because to do so would necessarily be conferring a right beyond the scope of the Physician Assistant Act. *See Rocky Mountain Energy v. Utah State Tax Commission,* supra at p. 2-3 (holding that "[r]ules are subordinate to statutes and cannot confer greater rights or disabilities").

CONCLUSION

It is a well-settled proposition of law that when two statutes purport to cover the same subject, the provisions of the more specific statute govern over the more general statute. Authority to sign a Utah Death Certificate is clearly set forth in the Utah Vital Statistics Act, mandating with a great degree of specificity who shall sign certificates of death. Conversely, the Physician Assistant Act does not expressly address the issue, or even mention "death certificate."

Accordingly, the Vital Statistics Act governs over the Physician Assistant Act and its corresponding administrative rule, and the only individuals having legal authority to sign a Utah Death Certificate are "health care professionals," i.e., physicians, advanced practice registered nurses (so long as the nurse practitioner has completed an education program regarding the completion of certificates of death), and the Utah Medical Examiner. It is our informal legal opinion that physician assistants do not have legal authority to sign death certificates.

Further, it is our informal legal opinion that because the Physician Assistant Practice Act Rule purports to allow physician assistants to sign death certificates, DOPL has exceeded its rulemaking authority. In this regard, I believe that the Practice Act Rule ought to be amended in one of two ways: (1) delete the last sentence of the rule, "Physician assistants may authenticate with their signature any form that may be authenticated by a physician's signature."; or (2) add language to the end of the rule, such that it reads, "Physician assistants may authenticate with their signature any form that may be authenticated by a physician's signature, **so long as such authentication is not proscribed by another statute.**"